IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 27TH MARCH 2007 / 6TH CHAITHRA 1929

WP(C).No. 5372 of 2007(M)

PETITIONER:

THE MANAGER,
U.P.SCHOOL, PULIMATH,
KILIMANOOR, THIRUVANANTHAPURAM.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:
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1. **M.SHAJILA BEEVI,**
   S.R.MANZIL, KANNANCODE, NILAMEL P.O.
   KOLLAM.

2. **THE DEPUTY DIRECTOR OF EDUCATION,**
   THIRUVANANTHAPURAM.

3. **THE ASSISTANT EDUCATIONAL OFFICER,**
   KILIMANOOR.

4. **PADMAKUMAR, WATCHER CUM PEON,**
   U.P.SCHOOL, PULIMATH, SUMAM NIVAS, PULIMATH.

5. **THE STATE OF KERALA, REPRESENTED BY THE**
   SECRETARY TO GOVERNMENT, GENERAL EDUCATION
   DEPARTMENT, THIRUVANANTHAPURAM.

BY ADV. SRI.LATHEESH SEBASTIAN
GOVT. PLEADER SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.M.JOSEPH, J.

W.P.(C).No.5372 OF 2007

Dated this the 27th day of March, 2007

JUDGMENT

Petitioner is the manager of a U.P. School. First respondent's father, who was working as an Arabic Teacher died on 02/08/99. Invoking Rule 51(b) of Chapter XIVA KER first respondent approached the Assistant Educational Officer. AEO by Ext.R1(b) order dated 27/11/2000 directed the petitioner to consider the application of the first respondent and to give appointment. A retirement vacancy arose in the school on 31/10/2001. According to the petitioner, petitioner has not received any communication from the AEO. In the meantime, first respondent filed a writ petition which came to be disposed of by Ext.P1 judgment. Therein, the learned Single Judge found that in view of the order passed by the Educational authority first respondent shall be appointed in the vacancy which is occupied by the fourth

respondent therein who was appointed by the petitioner. It was of course made clear that the rights of the manager to move the statutory authorities are kept open and without prejudice to the said right, if any, the original petition was allowed.

2. Petitioner preferred Ext.P2 revision before the first respondent. Ext.P3 is the interim order passed in the writ appeal filed by the petitioner. Therein the contention of the petitioner was noted that the first respondent has reasonable source of income. Ext.P4 is the judgment of the Division Bench in the writ appeal filed by the petitioner. The Division Bench dismissed the appeal and it was made clear that it is open to the petitioner to pursue his revision. Ext.P5 is the hearing note submitted by the petitioner before the Government. Ext.P6 is the order passed by the Government in revision. Petitioner challenges Ext.P7 Government order.

3. Counter affidavit is filed, to which reply is also filed.

4. I heard learned counsel appearing for the parties.

5. Learned counsel for the petitioner Sri.T.M.Abdul Lathiff would point out that when Ext.R1(b) was issued by the AEO, the AEO had not considered the various aspects which are relevant for deciding the right under Rule 51(b) (this is the order which of course the petitioner has implemented by appointing the first respondent pursuant to contempt of court case). In other words, the contention is that the matter did not receive the attention. He refers to Exts.R1(c) and (d) also in the same vein. The principal question raised by learned counsel for the petitioner is that no reliance can be placed on Ext.R1(e) certificate issued by the Village Officer. In Ext.R1(e), the annual income shown by the Village Officer is Rs. 8500/- Learned counsel for the petitioner submits that it is not correct to say that as it is seen stated in Ext.P6 that petitioner admitted that the income of the family as certified by the Village Officer is Rs. 8500/-. He would submit that the certificate issued by the Village Officer cannot be relied on and that he got the opportunity to challenge Ext.R1(e) only when the

matter came up before the Government in revision. He would submit that having challenged the correctness of Ext.R1(e), it was the duty of the Government to give relief to the petitioner by referring the matter to be decided by the concerned revenue authority in terms of clause 13 of the Government order dated 24/05/1999, which reads as follows:

> " Family income to be reckoned is the actual income available to all members of the family from all sources other than family pension. Income from the properties of the members of the family should also be reckoned. Income of the married sons and daughters and other members of the family living separately shall not be reckoned for calculating of the family income. In case of disputes on income, the case shall be referred to the concerned District Collector and the income reported by the Collector shall be accepted as the actual income. When salary based income calculated the pay including all allowances except Travelling allowances shall be reckoned for the purpose. For this purpose, necessary amendments

in the guidelines in GO(Ms)192/85/RD dt. 23-3-85 will be issued separately."

6. He would therefore impugn the finding in Ext.P6 that if there is any objection, appeal has to be filed before the higher revenue authorities. According to him, there is no need for the party to file an appeal and it is the duty of the Government to refer the matter to the next higher authority. He would submit that first respondent married an advocate who is now working abroad. He would also submit that the financial condition of the family of the first respondent was not so pathetic so as to warrant appointment being given on compassionate basis under Rule 51(b).

7. I am of the view that there is no merit in the contentions of the petitioner as correctly pointed by learned counsel for the first respondent. In **St.Ignatius High School v. State of Kerala** (2005(3)KLT 1000), this court held that the matter has to be viewed with reference to the relevant date. I am unable to accept the contention based on the financial condition alleged by the

petitioner with reference to the marital status of the first respondent. In fact, in the counter affidavit filed it is stated that the husband of the first respondent is having a net income of Rs. 4000/- Of course, the main question is the effect of Clause 13 of the Government order. I am of the view that the purport of the said clause is that if a person disputes the certificate issued , it is open to him to dispute the same and get the matter referred to the higher authority. On a perusal of Ext.P1 judgment dated 01-04-2003, it is clear that Ext.R1(e) certificate was produced before this court naturally with notice to the petitioner as Ext.P5. If that is so, even accepting the argument that he was not given the copy of the same earlier, he came to know about Ext.R1(e) in the year 2003. He filed a revision petition on 28/04/2003. Hearing note is preferred on 11/01/2007. If he was so advised, petitioner should have moved the concerned revenue officials and got the matter regarding the financial conditions of the first respondent referred to the concerned higher authority. I do not think it is open

to him to contend that in proceedings under Chapter XIVA he can ask the educational authorities and the Government, which is the ultimate authority under Rule 92, to refer the matter to the revenue officials particularly having regard to the facts and circumstances of this case. As I have already found, the petitioner was aware of Ext.R1(e) before April 2003. Apart from that I cannot overlook the fact that even in the writ petition and the reply affidavit filed, petitioner is not forthcoming with any specific details of the properties either immovable or movable. No doubt, learned counsel for the petitioner labored the point that the condition of the fourth respondent deserves compassionate consideration as he is financially in a bad condition. But having regard to my jurisdiction which is to consider the legality of the order passed arising under proceedings under Rule 51(b), I would think that it is not open to me to over turn the view taken by the educational authorities in the matter. It is to be noted that Rule 51(b) declares statutory right in favour of the dependent and the court is only to

look into the Government order which is incorporated in Rule 51(b). It is not open to the court to go in search of details about financial status outside the four corners of the Government order and when particular method is provided for impeaching a certificate issued in the Government order, it is not open to the manager to ask this court particularly in the facts and circumstances of this case to have the matter enquired into by the District Collector. I find no merit in the writ petition and it is dismissed.

K.M.JOSEPH
JUDGE

sv.